

**TITLE 11**  
**DEPARTMENT OF HEALTH**  
**CHAPTER 34 POISONS**

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Historical Notes: Chapter 34 of title 11 is based substantially upon Chapter 16 of the Department of Health Public Health Regulations entitled "Poisons."

[Eff. 6/1/1899; am 1/21/14; am 1/3/30; am 5/20/32; am 12/18/35; am 1/1/46; am 11/21/46; am 9/30/47; am 4/14/52; am 12/29/55; am 9/28/62; am 3/20/63; am 6/27/63; am 7/3/64; am 7/1/65; R SEP. 28, 1981]

**§11-34-1 Purpose.**

The purpose of this regulation is to ensure the public health and safety with respect to the possession, sale, transfer, use, or storage of all substances defined as "poisons." [Eff. SEP. 28, 1981] (Auth: HRS §§321-9, 321-10, 321-11, 330-2) (Imp: HRS §§321-11, 330-2)

**§11-34-2 Definitions.**

As used in this chapter:

"Adult" means a person who has attained the age of eighteen years.

"Child" means a person under the age of twelve years.

"Controlled substance" means a drug, substance, or immediate precursor in Schedules I through V of chapter 329, HRS.

"Department" means the department of health, State of Hawaii.

"Drug representative" means a person who introduces professional samples or brochures of prescriptions or over-the-counter drugs to practitioners or pharmacies to promote these drugs.

"Hazardous substance" means any substance or mixture of substances which is toxic, corrosive, an irritant, a strong sensitizer, flammable or combustible, or generates pressure through decomposition, heat, or other means, if such substance or mixture of substances may cause substantial personal injury or substantial illness during or as a proximate result of any customary or reasonably foreseeable handling or use, including reasonably foreseeable ingestion by children.

"Household poison" means a poison which is customarily sold for use by individuals in or about the household.

"Household substance" means any substance which is customarily produced or distributed for sale for consumption or use, or customarily stored, by individuals in or about the household and which is a hazardous substance, a pesticide, a food, drug, or cosmetic defined by §328-1, HRS, or a substance intended for use as fuel when stored in a portable container and used in the heating, cooking, or refrigeration system of a house.

"Minor" means any person under the age of eighteen years.

"Out-of-state prescription" means a prescription to be filled in the state but written by a practitioner who is licensed and authorized to prescribe drugs to patients under the applicable laws of any other state of the United States.

"Over-the-Counter (OTC) Drugs" means those drugs included in 21 CFR Part 330 which are not required to be dispensed on the prescription of a licensed practitioner.

"Permittee" means a person who has obtained a permit from the department to sell poisons.

"Pesticide" means any substance or mixture of substances intended for use in preventing, destroying, repelling, or mitigating any insects, rodents, nematodes, fungi, weeds, and other forms of plant or animal life or viruses, except viruses on or in living humans or other animals, which the department of agriculture or the administrator of the environmental protection agency shall declare to be a pest; and any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.

"Pharmacist" means a person qualified and licensed to practice pharmacy in the state in accordance with chapter 461, HRS.

"Poison" means any substance which has the capacity of causing substantial personal injury or substantial illness to the human body through ingestion, inhalation, contact, or absorption as a proximate result of any customary or reasonably foreseeable handling or use, including reasonably foreseeable ingestion by children.

"Poison" shall include substances classified under Schedule "A": any prescription drug, Schedule "B": any hazardous substance or pesticide marked or labeled "Poison"; Schedule "C": any hazardous substance or pesticide with a "Danger," "Warning," or "Caution" signal word and a statement to the effect, "May be fatal or harmful if swallowed, inhaled or absorbed through the skin". Substances which are excluded from this definition are "over-the-counter" drugs and substances in "ready-to-use" aerosol or atomized containers.

"Practitioner" means any of the following licensed persons authorized to dispense, administer, or prescribe drugs:

(1) "Dentist" means a person qualified and licensed in the state to practice dentistry in accordance with chapter 448, HRS.

(2) "Physician" means a person qualified and licensed in the state to practice medicine or surgery in accordance with chapter 453 or 460, HRS.

(3) "Podiatrist" means a person qualified and licensed in the state to practice podiatry (treatment of the human foot) in accordance with chapter 463-E, HRS.

(4) "Veterinarian" means a person qualified and licensed in the state to practice veterinary medicine in accordance with chapter 471, HRS.

"Prescription Drug" means a drug which may be dispensed only upon a written or oral prescription of a practitioner. A "prescription drug" shall bear a label with a statement, "Caution: Federal law prohibits

dispensing without prescription," or "Caution: Federal law restricts this drug to sale by or on the order of a licensed veterinarian."

"Restricted pesticide" means any pesticide designated as such by the federal environmental Pesticide Control Act or by chapter 149A, HRS.

"Retail sale" means the sale of products to the ultimate consumer, usually in small quantities (opposed to wholesale).

"Wholesale" means the sale of products generally in large quantities to retailers or jobbers rather than to the ultimate consumer (opposed to retail). The sale of poisons to a practitioner or to a permittee is deemed to be a sale at "wholesale" and not at "retail." [Eff. SEP. 28, 1981] (Auth: HRS §§321-9, 321-10, 321-11, 330-2) (Imp: HRS §§321-11, 330-2).

### **§11-34-3 Procedures for the application, renewal, suspension, and revocation of a poison permit.**

(a) A person who sells or offers for sale household poisons shall obtain a permit from the department.

(b) The following persons are exempted from obtaining a permit:

- (1) A practitioner;
- (2) A drug representative;
- (3) A door-to-door salesperson of household poisons providing that the distributor for these products has a permit; and
- (4) A person who sells non-household poisons.

(c) Application.

(1) An applicant shall be eighteen years or older.

(2) The applicant shall provide the following information:

- (A) The applicant's name, signature, and title with the firm;
- (B) The name of the applicant's firm, its business address, telephone number; whether the firm is a corporation, partnership, sole proprietorship, or a pharmacy; its authority to do business in the state; whether the firm will be retailing or wholesaling poisons;
- (C) The names of all the applicant's partners, managers, and sales supervisors authorized to sell poisons on the applicant's or perimeter's behalf; and
- (D) The schedule(s) of poisons the applicant is planning to sell, including a list (in case of proposed retail sale) describing the poisons in Schedule "B." This list, in duplicate, shall include brand names, names and percentages of active ingredients, statements of purpose and use, and of antidote, if any.

(3) A permit shall cover the applicant's duly authorized agents referred to in §11-34-3(c)(2)(C) and other authorized salespersons.

The permit shall be conspicuously posted at the perimeter's wholesale or retail establishment.

Any person selling poisons at more than one location shall apply for a separate permit for each location.

(c) Renewal. Permits shall expire on June 30th of each year. A renewal application shall be submitted to the department prior to the expiration date and shall include any changes in the permittee's previous application.

(d) Revocation, suspension, or refusal of a permit. The department may revoke, suspend, or refuse to issue a permit for violation(s) of any provision of this chapter or of any law relating to poisons following notification to the permittee or to the applicant of such violation(s) and offering that person an opportunity to be heard. [Eff. SEP. 28, 1981] (Auth: HRS §§321-9, 321-10, 321-11, 330-2) (Imp: HRS §§321-11, 330-2).

#### **§11-34-4 Buying and selling of poisons.**

(a) A person who sells poisons shall be either eighteen years or older or under the direct supervision and control of an adult who is authorized under this chapter to sell poisons.

(b) A wholesaler shall sell poisons only to other wholesalers or retailers who have obtained a permit from the department or who are exempted from obtaining a permit under §11-34-3(b).

(c) Poisons shall be kept secured when not being offered for sale.

(d) Pesticides and hazardous substances for sale shall be kept separate and apart from all food items.

(e) No person shall sell a poison which is not packaged or labeled in conformance with applicable federal and state statutes or regulations, including the Federal Hazardous Substances Act and the Federal Caustic Poison Act, 16 CFR Part 1500; Regulations for the Enforcement of the Federal Insecticide, Fungicide, and Rodenticide Act, 40 CFR Part 162; Hazardous Materials Regulations, 49 CFR Part 172; Drugs for Human Use, 21 CFR Part 369; Poison Prevention Packaging, 16 CFR Part 1700; and chapters 328 and 330C, HRS.

(f) No person shall sell or offer for sale any castor bean (*Ricinus communis*) or any jequirity bean (*Abrus precatorius*) or any leis, pendants, ornaments, jewelry, or other items made with the castor bean or with the jequirity bean. This restriction shall not apply to sales of the beans for botanical, medicinal, scientific, or industrial purposes.

(g) No person shall obtain or attempt to obtain a poison by fraud, deceit, misrepresentation, or subterfuge; by the forgery or alteration of a prescription or of any written order; by the concealment of a material fact; by the use of a false name or the giving of a false address. [Eff. SEP. 28, 1981] (Auth: HRS §§321-9, 321-10, 321-11, 330-2) (Imp: HRS §§321-11, 330-2).

#### **§11-34-5 Schedule "A" poisons.**

(a) Schedule "A" poisons shall be any prescription drug as defined in §11-34-2.

(b) Schedule "A" poisons shall be sold or offered for sale at wholesale only by a permittee, and at retail only by a practitioner or by a pharmacist on a prescription by a practitioner.

(c) No person shall import or receive a Schedule "A" poison from outside the state except a permittee for sale at wholesale or retail, a practitioner, or a drug representative.

(d) No person, except as provided in §11-34-5(e), shall possess or control any Schedule "A" poison without having a permit or lawfully obtaining the poison from a practitioner or by means of a prescription.

(e) The requirement of §11-34-5(d) shall not apply to a person lawfully performing his duties requiring possession or control of these poisons such as a practitioner, pharmacist, nurse, intern, other medical personnel, carrier, warehouseperson, drug representative, or public officer.

(f) Prescriptions shall be prescribed, dispensed, and recorded in accordance with chapter 328, HRS. A prescription issued by a practitioner shall:

- (1) Be written in ink, indelible pencil, or typewritten;
- (2) Bear the date of issuance;
- (3) Bear the original handwritten signature of the practitioner;
- (4) Bear the practitioner's name and business address;
- (5) Bear the name, strength, quantity, and directions for use of the poison;
- (6) Bear the name and address of the person for whom the prescription was filled or of the name and address of the owner of the animal for which the poison is prescribed (unless the pharmacy filling the prescription has such address on file); and
- (7) Bear the number of allowable refills, if refillable.

(8) Out-of-state prescriptions shall be filled and recorded in accordance with chapter 330, HRS.

(g) The prescription requirements of §11-34-5(f) may be amended at a hospital facility according to their policies and procedures for in-care patients.

(h) A prescription for non-controlled substances which is on file at one pharmacy may be orally refilled at another pharmacy provided that the following conditions are met:

- (1) The original prescription kept at the first pharmacy is marked "refillable", with valid refills remaining;
- (2) The original prescription at the first pharmacy is marked by that pharmacist indicating that a copy of this prescription was issued to the second pharmacy, and the date of issuance;
- (3) The original prescription at the first pharmacy is then marked "non-refillable";
- (4) The copy of the prescription made at the second pharmacy shall show the date of original filling and of the last filling as well as the number of valid refills remaining; and
- (5) The copy made at the second pharmacy shall indicate that it is a copy and reference the location and file number of the original prescription.

(i) Controlled substances shall be manufactured, distributed, prescribed, and dispensed in accordance with the laws and regulations of chapter 329, HRS, and Administrative Rules 11-32, "Controlled Substances." [Eff. SEP. 28, 1981] (Auth: HRS §§321-9, 321-10, 321-11, 330-2) (Imp: HRS §§321-11, 330-2)

#### **§11-34-6 Schedule "B" poisons.**

- (a) Schedule "B" poisons shall be any hazardous substance or pesticide marked or labeled "Poison."
- (b) No person shall sell or offer for sale any Schedule "B" poison to a minor.

(c) Pesticides, especially restricted pesticides, shall be also licensed, sold, and purchased in accordance with chapter 149A, HRS. [ Eff. SEP. 28, 1981] (Auth: HRS §§321-9, 321-10, 321-11, 330-2) (Imp: HRS §§321-11, 330-2).

#### **§11-34-7 Schedule "C" poisons.**

(a) Schedule "C" poisons shall be any hazardous substance or pesticide with a "Danger," "Warning," or "Caution" signal word and a statement to the effect, "May be fatal or harmful if swallowed, inhaled, or absorbed through the skin."

(b) No person shall sell any Schedule "C" poison to a child.

(c) Poisons capable of inducing an intoxicating effect shall be sold and purchased in accordance with chapter 328E, HRS, and applicable city and county ordinances. [Eff. SEP. 28, 1981] (Auth: HRS §§321-9, 321-10, 321-11, 330-2) (Imp: HRS §§321-11,330-2).

#### **§11-34-8 Penalty.**

Any person violating any provision of this chapter shall be subject to the penalties under chapters 321-18 or 330-3, HRS. [Eff. SEP. 28, 1981] (Auth: HRS §§321-9, 321-10, 321-11, 330-2) (Imp: HRS §§321-11, 330-2).

#### **§11-34-9 Severability.**

Should any section, paragraph, sentence, clause, phrase, or application of this chapter be declared unconstitutional or invalid for any reason, the remainder or any other application of this chapter shall not be affected thereby. [Eff: SEP. 28, 1981] (Auth: HRS §§321-9, 321-10, 321-11, 330-2) (Imp: HRS §§321-11, 330-2).